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ordinance was passed. The defendant refused to pay his assessment. *Held*, that he is not liable. *City of Lexington v. Walley*, 109 S. W. 299 (Ky.).

A substantial variance from a contract for city improvements will invalidate an assessment therefor. *Scranton Sewer*, 213 Pa. 4. The improvement is then regarded as if made without the authorizing ordinance required by statute as a public safeguard. *City of Excelsior Springs v. Ettenson*, 96 S. W. 701 (Mo.). It is usually no defense that the work was not done strictly according to specifications, where the proper authorities have accepted it, but this rule does not apply so as to permit a city to accept an improvement essentially different from the one contracted for. *Gage v. People*, 193 Ill. 316. Nor could a subsequent ordinance ratify the work so as to validate the assessment; otherwise that which had to be done by ordinance could in effect be accomplished without that formality. *Hubbell v. Bennett*, 130 Ia. 66. But to require literal compliance in every respect where there has been an honest endeavor to perform the contract would allow the assessment to be avoided on technical grounds. See *Lindsey v. Brawner*, 97 S. W. 1 (Ky.). Such a course is as open to objection as permitting the city to accept a totally different improvement. Whether in the case considered there was a substantial variance is doubtful. Cf. *City of Lowell v. Hadley*, 49 Mass. 180.

NUISANCE — EQUITABLE RELIEF — BILL AGAINST PUBLIC NUISANCE BY INDIVIDUAL. — The defendant, a riparian owner on New York Bay, erected a pier. The complainant, although he showed no special damage, prayed that the defendant be enjoined from obstructing the public right of way between high and low water mark. *Held*, that the complainant is not entitled to an injunction. *Barnes v. Midland Railroad Terminal Co.*, 126 N. Y. App. Div. 435. See NOTES, p. 137.

PRESCRIPTION — ACQUISITION OF RIGHTS — PRESCRIPTIVE DAMAGE. — The plaintiffs sought to enjoin the defendant from causing sewage to pass over their oyster beds, alleging as damage that the sale of their oysters had been recently prohibited. The defendant relied on a prescriptive right, proving that sewage had been so passed during the statutory period. *Held*, that the injunction should be granted. *Owen v. Faversham Corporation*, 72 J. P. 404 (Eng., Ch. D., June 23, 1908).

In general a natural right is not invaded unless some actual damage is suffered. *Sturges v. Bridgman*, 11 Ch. D. 852. An exception is made in the case of water rights, in which any sensible diminution gives a right of action. *Roberts v. Gwyrfael District Council*, [1899] 1 Ch. 583. A prescriptive right to commit a nuisance has been acquired when no actual damage was suffered during the statutory period. *Dana v. Valentine*, 5 Met. (Mass.) 8. The prerequisite right of action involved in this doctrine is based on either of the fallacious views, that an action must be given to prevent the acquisition of a prescriptive right, or that damage, though not yet actual, may be assumed to exist because of a possible prospective alteration in the use of the property. See *Farly v. Gate City Gaslight Co.*, 105 Ga. 323; *Ruckman v. Green*, 9 Hun (N. Y.) 225. The general adoption of this rule would entail a constant watchfulness by landowners for possible future damage and much accompanying litigation. And in the absence of such caution prescriptive rights would so multiply as to impair seriously the development of property. This rule, not at all established in this country, the English courts wisely refuse to follow.

PROPERTY — LANDLORD AND TENANT — SURRENDER BY DELIVERY OF KEYS. — A landlord accepted the keys from a tenant who left before the end of his term, but specified that it was only for the purpose of re-letting for the tenant's benefit. He advertised at an increased rental and contracted for extensive alterations to be made at once. He later sued for the rent due after the tenant had vacated. *Held*, that the tenant is not liable. *In re Schomacker Pianoforte Mfg. Co.*, 163 Fed. 413 (Dist. Ct., E. D. Pa.).

A mere delivery of the keys by the tenant to the landlord does not work a surrender of the term. *Newton v. Speare Co.*, 19 R. I. 546. But it is settled that